

Final Order Denying Refund: 01-20182068
Indiana Individual Income Tax
For The Tax Year 2015

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Husband and Wife's protest regarding the maximum amount of annuity claimed on their 2015 IT-40 is denied. Husband and Wife reached the maximum amount of the claimed annuity allowed.

ISSUE

I. Income Tax—Burden of Proof Assessment Incorrect.

Authority: IC § 6-3-1-3.5; IC § 6-3-2-1; IC § 6-3-2-2; IC § 6-8.1-5-1; *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64 (Ind. 2009); IT-40 Full-Year Resident Individual Income Tax Booklet, 2015.

Taxpayers protest the Department's refund denial.

STATEMENT OF FACTS

Husband and Wife ("Taxpayers") filed their 2015 Indiana IT-40 timely. Taxpayers filed an amended IT-40X for 2015 to claim their annuity as a deduction and request a refund. The Indiana Department of Revenue ("Department") determined that Taxpayers' amended deduction exceeds the allowed amount of annuity deduction and subsequently denied Taxpayers' refund claim.

Taxpayers protested the refund denial and waived their right to a hearing. Thus, this Final Order Denying Refund is based on the information available to the Department and provided in Taxpayers' protest file. Additional facts will be provided as necessary.

I. Income Tax—Burden of Proof Assessment Incorrect.

DISCUSSION

The Department determined that Taxpayers' calculated taxable Social Security deduction exceeds the amount allowed (\$8,000). Taxpayers' representative stated in his protest letter that:

1. A copy of the front page of taxpayer's Federal Form 1040 for 2015 is attached. Line 20a shows Social Security benefits of \$15,227.00. Line 20b shows \$8,933.00 of this amount as being taxable on the Federal return. A copy of these Social Security earnings is attached. One can see that the Social Security earnings reported in 2015 belonged solely to [Husband]. Further, you must conclude that the taxpayer had no Social Security earnings for 2015.

2. Line 16a Federal Form 1040 shows pensions and annuities in the amount of \$33,506.00. Line 6b shows the taxable amount as \$31,907.00. One line 16a, the gross is made up of two documents: (1) the retirement Form 1099 for the spouse showing taxable distribution of \$1,358.16 belonging to the spouse (copy attached) and (2) the taxable annuity payments to the taxpayer in the amount of \$30,549.24 (copy attached).

In conclusion, it was the purpose of their amended return to allow the taxpayer, [Husband], to claim the \$8,000 maximum deduction for his annuity payment received in 2015.

As a threshold issue, all tax assessments are *prima facie* evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012). "[E]ach assessment and each tax year stands alone." *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64, 69 (Ind. 2009). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

Indiana imposes a tax "on the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). IC § 6-3-2-2(a) specifically outlines what is income derived from Indiana sources and subject to Indiana income tax. The presumption is that taxpayers file their federal income tax returns as required pursuant to the Internal Revenue Code. Thus, to compute what is considered the Taxpayers' Indiana income tax, the Indiana statute refers to the Internal Revenue Code. IC § 6-3-1-3.5(a) provides the starting point to determine the Taxpayers' taxable income and to calculate what would be their Indiana income tax after applying certain additions and subtractions to that starting point.

In this instance, Taxpayers are claiming over \$8,000 in deductions for the Civil Servant annuity on their amended 2015 Indiana IT-40. Pursuant to the IT-40 Full-Year Resident Individual Income Tax Booklet when calculating deductions of the annuity it is equal to the amount of the annuity or \$8,000 (whichever is less) minus any social security benefit received, in this case \$8,933. Since Taxpayers' annuity minus their social security benefit is more than the annuity, the annuity was properly denied. Taxpayers have provided no documentation to show that the annuity maximum should be more than \$8,000. Nor have they shown that the Department's calculation is incorrect. Thus, Taxpayers did not meet their burden as described in IC § 6-8.1-5-1(c) and therefore, their refund was properly denied.

FINDING

Taxpayers' protest is denied.

December 10, 2018

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